

## **REMARKS**

Claims 1-15 and 17-23 are now pending in the application. Claim 16 has been cancelled. Claims 21-23 have been added as new. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-3, 6-12, 14-16 and 18-20 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over Bjornsson (U.S. Pat. No. 5,621,669, hereinafter "Bjornsson"). This rejection is respectfully traversed.

At the outset, Applicant notes that claims 1, 10, and 15 have been amended to include a light sensor (claims 1 and 15) or sensing light (claim 10). Applicant respectfully asserts that this limitation is not present anywhere, nor is it suggested, in Bjornsson. Applicant notes that similar limitations were present in previously presented claims 2, 11, and 16. However, the Examiner has asserted that these limitations are present in Bjornsson.

#### **Claim 2**

With regard to claim 2, the Examiner cites Bjornsson (col. 6, lines 15-22) as disclosing a light sensor. However, after careful review, Applicant fails to see any disclosure of or reference to a light sensor. Specifically, lines 14-22 in column 6 of Bjornsson state:

The invention incorporates novel means for exciting and obtaining information from a variety of sensors which may operate singly, interchangeably, or in combination to originate diverse and useful measurement values. Multiple sensors of multiple types may concurrently

operate on a single probe so as to better characterize and indicate the environmental conditions for which control response may be required. The instant invention consists of one or more sensors.”

Since disclosure of a light sensor is clearly lacking in Bjornsson, Applicant submits that the current rejection under 35 U.S.C. §102(b) is clearly inappropriate. Applicant further submits that any rejection formed by the Examiner under 35 U.S.C. §103 is inappropriate as well.

Specifically, Applicant notes that it does not seem possible to include a light sensor in the sensor probe disclosed in Bjornsson, as the sensors all appear to be positioned underground when in use. Specifically, when referencing the different sensors used, Bjornsson states “[s]ensor 20 is a capacitive impedance-type soil volume moisture sensor. Sensor 18 is a conductivity sensor. Sensor 16 is a thermistor temperature sensor. Sensor 14 is a combination electrode type pH sensor.” (col. 13, lines 45-50). As stated above, all of these sensors appear to be underground soil sensors and therefore would result in the probe being positioned underground. Therefore, it does not appear to be possible to sense light using the probe of Bjornsson.

Further, any probe taught by Bjornsson actually appears to teach away from a probe incorporating a light sensor due to its underground nature, as discussed above. It is established that where references, instead of suggesting the invention, seek or warn to avoid the suggestion, such references diverge from and teach away from the invention at hand and it is error to find obviousness based on such references. In re Fine, 837 F.2d 1071, 1074, 5USPQ2d 1596, 1599 (Fed. Cir. 1988)(citing W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1550, 220 USPQ2d 303, 311 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)).

In view of the arguments above, Applicant asserts that the rejection of claim 1 under §102(b) in view of Bjornsson is clearly inappropriate and any rejection under §103 would be improper as well. As such, Applicant submits that claim 1 is currently in condition for allowance and no new search is required, as the amended material in claim 1 was previously presented in claim 2. Claims 2-9 depend from claim 1 and should be in condition for allowance for the reasons set forth above. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-9.

#### Claim 11

With respect to claim 11, the Examiner admits that Bjornsson “does not describe the sunlight intensity reading per se.” However, the Examiner argues that Bjornsson “discloses the specific selection of sensor type as a sensor type providing the function of the same impedance sensor 20 inputs on line 40 in Figure 1.” Applicant simply fails to see the disclosure of light sensing in Bjornsson. Sensor 20 in Bjornsson is not referenced as a light sensor or sensing light in the reference, nor is it suggested. As indicated above, the probe of Bjornsson appears to be located underground when in use, therefore light sensing does not appear possible. Further, sensor 20 is clearly referenced as a “capacitive impedance-type soil volume moisture sensor.” (col. 113, lines 46-47). As such, sensor 20 at least would be disposed underground in use.

As indicated above with respect to claim 1, since disclosure of sensing light is clearly lacking in Bjornsson, Applicant submits that the current rejection under 35 U.S.C. §102(b) is clearly inappropriate. Applicant further submits that any rejection formed by the Examiner under 35 U.S.C. §103 is inappropriate as well.

Again, Applicant notes that any probe taught by Bjornsson actually appears to teach away from a probe sensing light due to its underground nature, as discussed above. It is established that where references, instead of suggesting the invention, seek or warn to avoid the suggestion, such references diverge from and teach away from the invention at hand and it is error to find obviousness based on such references. In re Fine, 837 F.2d 1071, 1074, 5USPQ2d 1596, 1599 (Fed. Cir. 1988)(citing W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1550, 220 USPQ2d 303, 311 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)).

In view of the arguments above, Applicant asserts that the rejection of claim 10 under §102(b) in view of Bjornsson is clearly inappropriate and any rejection under §103 would be improper as well. As such Applicant submits that claim 10 is currently in condition for allowance and no new search is required, as the amended material in claim 10 was previously presented in claim 11. Claims 11-14 depend from claim 10 and should be in condition for allowance for the reasons set forth above. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 10-14.

#### Claim 16

While Applicant has amended claim 15 to include the limitations of claim 16, it is not clear what reference the Examiner is citing, as there is no reference number associated with Koederitz. Applicant has attempted to contact the Examiner, but has been unsuccessful. Therefore, due to the vagueness of the cited reference, Applicant is unable to consider whether the reference teaches the features suggested by the

Examiner. Therefore, Applicant respectfully requests clarification of the reference or removal of the rejection of claims 15 and 17-20.

#### **ALLOWABLE SUBJECT MATTER**

The Examiner states that claims 4, 5, 13 and 17 would be allowable if rewritten in independent form. However, in view of the amendments to claims 1, 10, and 15 and the arguments set forth above, Applicant respectfully submits that claims 4, 5, 13, and 17 are in condition for allowance, as they depend from claims 1, 10, and 15 respectively.

#### **NEW CLAIMS**

Claims 21-23 have been added as new. The limitations found in the new claims are not shown in the references cited by the Examiner. Additionally, the features found in claims 21-23 are disclosed in the specification and drawings as originally filed and therefore do not constitute new matter.

#### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner

believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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